

MATTER OF SINGH

In Section 246 Proceedings

A-11430285

Decided by Board December 19, 1969

The running of the five-year limitation provision of section 246 of the Immigration and Nationality Act is tolled by the service upon the alien of "notice of intention to rescind" adjustment of status issued by the District Director in accordance with the provisions of 8 CFR 246.1.

RESCISSION GROUNDS: Marriage not valid for nonquota status, and quota visa not available.

ON BEHALF OF RESPONDENT:
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ON BEHALF OF SERVICE:
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(Brief filed)

The above-captioned case concerns an interpretation of the five-year limitation provision of section 246(a) of the Immigration and Nationality Act (8 U.S.C. 1256(a))¹ insofar as it relates to the rescission of an adjustment of a nonimmigrant alien's immigration status to that of a permanent resident alien. The special inquiry officer, on December 6, 1968, concluded that it is

¹ The limitation provision of section 246(a) insofar as it relates to a rescission of an adjustment of status under section 245 of the Act reads as follows:

If, at any time within five years after the status of a person has been otherwise adjusted under the provisions of section 245 . . . of this Act or any other provision of law to that of an alien lawfully admitted for permanent residence, it shall appear to the satisfaction of the Attorney General that the person was not in fact eligible for such adjustment of status, the Attorney General shall rescind the action taken granting an adjustment of status to such person and cancelling deportation in the case of such person if that occurred and the person shall thereupon be subject to all provisions of this Act to the same extent as if the adjustment of status had not been made.